Supreme Court, U.S.
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No. 86-575

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

DOROTHY McCLELLAN,
Petitioner,

v.

STATE OF WEST VIRGINIA,
Respondent.

PETITIONER'S REPLY MEMORANDUM

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The State of West Virginia, in its opposing brief in No. 86-575, argues that the Court lacks jurisdiction over this matter because the West Virginia Supreme Court of Appeals has granted petitioner's state writ of habeas corpus to the extent it has permitted petitioner's counsel to review certain agency records.

The fact that a defendant "might obtain release by a subsequent and distinct proceeding [such as habeas corpus] . . . does not affect the finality of the

existing judgment." Largent v. Texas, 318 U.S. 418, 421-22 (1943). See R. Stern, E. Gressman and S. Shapiro, Supreme Court Practice, 137 (6th ed. 1986). As required by Sup.Ct.R. 20.1 and 20.4, petitioner's petition for certiorari was filed upon the denial of her Motion for Reconsideration of the denial of her Petition for Appeal by the West Virginia Supreme Court of Appeals.[1] The state judgment is thus final.

If the Court were nevertheless to accept respondent's contention that a final judgment has not yet been entered, petitioner respectfully requests that the Court retain her petition until such time as her pending state habeas proceeding is concluded and the Court can consider the

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[1]Upon denial of petitioner's Motion for Reconsideration, petitioner was ordered to, and continues to, serve her prison sentence of one to five years.

crucial issues raised by petitioner on their merits.[2]

Respectfully submitted,

PHILIP J. HIRSCHKOP

Counsel of Record for
Petitioner Dorothy McClellan

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[2]Alternatively, petitioner would request leave to refile her petition for certiorari upon the completion of her state habeas proceeding.